IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
AT JAIPUR BENCH, JAIPUR.

**J U D G M E N T**

S.B. CIVIL MISC. APPEAL NO. 1926/2003

*TARACHAND Vs. TARA INDUSTRIES & ANR.*

DATE: 30.04.2007.

**HON'BLE MR. K.S. RATHORE, J.**

Mr. Anudyuti Maitra for the claimant-appellant.
Mr. Satya Narain Shah for the respondent No.1

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The present civil misc. appeal under Section 30(1) of the Workmen's Compensation Act, 1923 is directed against the order dated 23.06.2003 passed by the Commissioner, Workmen's Compensation Act in Claim No. WCA/NF/21/98, whereby the claim of the claimant-appellant was disallowed by reversing the order dated 12.09.2000.

Brief facts of the case are that the claimant-appellant alleged that when he was serving with the respondent No.1 as workman he received injury which resulted in imputation of the left hand, therefore, he filed appeal and after service upon the respondents ex parte award has been passed by the Commissioner, Workmen's Compensation. Having knowledge of the ex parte award passed by the Commissioner, Workmen's

Compensation, the respondent No.1 Tara Industries through its proprietor Shri Makhanlal Kumawat filed an application for restoration of the petition which has been allowed and the petition has been restored and the claim petition was heard and the appellant filed affidavit and produced two witnesses also but the material evidence with regard to the injury and the employment which is alleged to be stated in the statement made by the claimant has not been produced. It is also not disputed that it is wrongly averred in the appeal that opportunity of cross examination has not been provided, whereas the learned counsel Mr. Shah appearing for the respondent No.1 submitted order-sheets which clearly show that several opportunities were provided to the appellant and as many as 8 chances have been provided to produce the witnesses for cross examination and has also not produced any doctor to prove the disability.

Further more learned counsel Mr. Shah submitted that bare minimum requirement under Sections 10 and 11 of the Workmen's Compensation Act has not been made by the appellant. He also referred Rule 33 of the Workmen's Compensation Rules, 1924 which gives power for **summoning the witnesses**- If an application is

presented to any party to the proceedings for the citation of witnesses, the Commissioner shall, on payment of the prescribed expenses, and fees, issue summonses for the appearance of such witnesses, unless he considers that their appearance is not necessary for the just decision of the case.

It is also alleged that the appellant has not moved any application and deposited the prescribed expenses for summoning the witnesses. Not only this the appellant has not availed the chances provided to him and ample chances were provided to the appellant to produce the witnesses but the same have not been availed. Thus, the appellant himself failed to produce any document and the witnesses in support of his claim and therefore, the allegation that opportunity of cross examination has not been provided, is per se contrary to the record.

Further the learned counsel Mr. Shah appearing for the respondent No.1 referred several judgments with regard to maintainability of the appeal as the appeal does not involve substantial question of law.

For the purposes of this objection he placed reliance on the judgments rendered by this Court in the case of **The Divisional Forest Officer, Kota Vs. Shri**

**Ram Prasad & Others, reported in 1995(3) WLC(Raj.) 716** and in the case of **Mana Ram Vs. The Secretary, 2000 WLC (Raj.) UC 54.**

In rejoinder the learned counsel for the appellant placed reliance on the judgment rendered by this Court in the case of **The Oriental Insurance Co. Ltd. Vs. Smt. Savita & Ors., 1999(3) WLC(Raj.) 442,** wherein substantial question of law– Question whether commissioner had no jurisdiction because deceased was not workman, is substantial question of law. Therefore, there is substantial question of law in the appeal.

Having heard rival submissions of the respective parties and upon careful perusal of the impugned order dated 23.06.2003 as also the relevant provisions of the Workmen's Compensation Act, 1923 as well as the judgments referred by the respective parties, the Commissioner, Workmen's Compensation has categorically stated that the appellant has utterly failed to avail the opportunities to produce the witnesses for cross examination and has utterly failed to prove his claim supporting with the documents and has also not examined the doctor to prove the injury report.

Thus, I find no illegality in the impugned order dated 23.06.2003 passed by the Commissioner, Workmen's Compensation Act, whereby he rejected the claim of the appellant and the impugned order requires no interference by this Court.

Consequently, the present civil misc. appeal fails and the same is hereby dismissed.

**(K.S. RATHORE),J.**

/KKC/